

§ 25.144

case or other shipping container of bottled beer. A brewer may use unmarked cases to hold:

(1) Cartons of beer, if the visible portion of the cartons shows the required name; or

(2) Bottles or cans with plastic carriers, if the visible portion of the bottles or cans shows the required name.

(b) *Other information.* The brewer may show on a case or shipping container the place of production (city and, when necessary for identification, State), and the addresses of other breweries owned by the same person, firm, or corporation (as defined in §25.181). If only one address is shown, it will be that of the producing brewery, or of the brewer's principal place of business.

(Approved by the Office of Management and Budget under control number 1512-0474)

(Sec. 201, Pub. L. 85-859, 72 Stat. 1389, as amended (26 U.S.C. 5412))

[T.D. ATF-224, 51 FR 7673, Mar. 5, 1986, as amended by T.D. ATF-225, 51 FR 8492, Mar. 12, 1986]

§ 25.144 Rebranding barrels and kegs.

(a) A brewer may not use a barrel or keg which bears the name of more than one brewer, and except as provided in §25.231, may not use a barrel or keg bearing the name of a brewer other than the producing brewer.

(b) A brewer who purchases or otherwise obtains barrels or kegs from another brewer shall permanently remove or durably cover the original marks and brands after notifying the appropriate TTB officer of the proposed action. A brewer may use the barrels or kegs obtained without removing or covering the original marks and brands if the brewer:

(1) Adopts a trade name substantially identical to the name appearing on the barrels or kegs; or

(2) Succeeds to a brewer who has discontinued business, in which case the brewer may add marks or brands, in accordance with §25.141, which indicate ownership.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1389, as amended (26 U.S.C. 5412))

§ 25.145 Tanks, vehicles, and vessels.

(a) Each brewer who transfers beer to another brewery of the same ownership

27 CFR Ch. I (4-1-08 Edition)

(as defined in §25.181), or who exports beer without payment of tax, as provided in §25.203, shall plainly and durably mark each tank, tank car, tank truck, tank ship, barge, or deep tank of a vessel in accordance with paragraph (b) of this section. These marks may be placed on a label securely affixed to the route board of the container.

(b) The brewer shall mark each container with—

(1) The designation “Beer”;

(2) The brewer's name;

(3) The address of the brewery from which removed;

(4) The address of the brewery to which transferred or the marks required for exportation in Part 28 of this chapter, as applicable;

(5) The date of shipment; and

(6) The quantity, expressed in barrels.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1334, as amended, 1389, as amended (26 U.S.C. 5053, 5414))

[T.D. ATF-224, 51 FR 7673, Mar. 5, 1986, as amended by T.D. TTB-8, 69 FR 3830, Jan. 27, 2004]

Subpart K—Tax on Beer

LIABILITY FOR TAX

§ 25.151 Rate of tax.

All beer, brewed or produced, and removed for consumption or sale, is subject to the tax prescribed by 26 U.S.C. 5051, for every barrel containing not more than 31 gallons, and at a like rate for any other quantity or for the fractional parts of a barrel as authorized in §25.156.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1333, as amended (26 U.S.C. 5051, 5052))

§ 25.152 Reduced rate of tax for certain brewers.

(a) *General.* Section 5051(a)(2) of Title 26 U.S.C. provides for a reduced rate of tax on the first 60,000 barrels of beer removed for consumption or sale by a brewer during a calendar year. To be eligible to pay the reduced rate of tax, a brewer:

(1) Shall brew or produce the beer at a qualified brewery in the United States;

(2) May not produce more than 2,000,000 barrels of beer per calendar year; and

(3) May not be a member of a "controlled group" of brewers whose members together produce more than 2,000,000 barrels of beer per calendar year.

The appropriate TTB officer shall deny use of the reduced rate of tax provided by 26 U.S.C. 5051(a)(2) where it is determined that the allowance of such a reduced rate would benefit a person who would otherwise fail to qualify for use of such rate.

(b) *Definitions.* For the purpose of determining eligibility for payment of the reduced rate of tax on beer, terms have the following meanings:

(1) *Controlled group.* A related group of brewers as defined in 26 U.S.C. 5051(a)(2)(B). Controlled groups include, but are not limited to:

(i) Parent-subsidiary controlled groups as defined in 26 CFR 1.1563-1(a)(2);

(ii) Brother-sister controlled groups as defined in 26 CFR 1.1563-1(a)(3); and

(iii) Combined groups as defined in 26 CFR 1.1563-1(a)(4). Stock ownership in a corporation need not be direct and 51% constructive ownership, defined in 26 CFR 1.1563-3, may be acquired through:

- (A) An option to purchase stock;
- (B) Attribution from partnerships;
- (C) Attribution from estate or trusts;
- (D) Attribution from corporations; or
- (E) Ownership by spouses, children, grandchildren, parents, and grandparents.

(2) *Production of beer.* The production of beer as recorded in the brewer's daily records and reported in the Brewer's Report of Operations, Form 5130.9. For the purpose of determining compliance with the 2,000,000 barrel limitation, production of beer by a brewer or a controlled group of brewers includes both beer produced at qualified breweries within the United States and beer produced outside the United States.

(c) *Brewers operating more than one brewery.* Brewers who operate more than one brewery shall include the combined production of beer at all their breweries when determining eligibility under the 2,000,000 barrel limitation. The reduced rate of tax applies to

the first 60,000 barrels of beer removed for consumption or sale in a calendar year by the brewer; the brewer shall apportion the 60,000 barrels among the breweries in the manner described in the notice as provided by § 25.167(b)(3).

(d) *Controlled groups of brewers.* Members of a controlled group of brewers shall include the combined production of beer by all member brewers when determining eligibility under the 2,000,000 limitation. The reduced rate of tax applies to the first 60,000 barrels of beer removed for consumption or sale in a calendar year by the controlled group of brewers; the controlled group of brewers shall apportion the 60,000 barrels among member brewers in the manner described in each brewer's notice as provided by § 25.167(b)(3).

(Sec. 201, Pub. L. 85-859, 72 Stat. 1333, as amended (26 U.S.C. 5052))

[T.D. ATD-224, 51 FR 7673, Mar. 5, 1986, as amended by T.D. ATF-307, 55 FR 52738, Dec. 21, 1990; T.D. ATF-345, 58 FR 40357, July 28, 1993]

§ 25.153 Persons liable for tax.

The tax imposed by law on beer (including beer purchased or procured by one brewer from another) shall be paid by the brewer of the beer at the brewery where produced. The tax on beer transferred to a brewery from other breweries owned by the same brewer in accordance with subpart L of this part shall be paid by the brewer at the brewery from which the beer is removed for consumption or sale.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1334, as amended, 1389, as amended (26 U.S.C. 5054, 5413, 5414))

DETERMINATION OF TAX

§ 25.155 Types of containers.

Beer may be removed from a brewery for consumption or sale only in barrels, kegs, bottles, and similar containers, as provided in this part. A container which the appropriate TTB officer determines to be similar to a bottle or can will be treated as a bottle for purposes of this part. A container which the appropriate TTB officer determines to be similar to a barrel or keg and which conforms to one of the sizes prescribed for barrels or kegs in § 25.156